DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

OFFICE OF
CHIEF COUNSEL

October 27, 2000

CC:PA:APJP
SPR-119370-00

MEMORANDUM FOR DIANE Y. HENDERSON
SMALL BUSINESS & SELF EMPLOYED
STAND-UP MANAGEMENT TEAM C:MOD:SAL:SB/SE

FROM: Deborah A. Butler CC:PA
Associate Chief Counsel (Procedure and Administration)

SUBJECT: Authority to sign Notices of Deficiency and Forms 872

This memorandum responds to your request for assistance with respect to the above referenced matter.

ISSUES

1. Whether officials or employees of the Small Business & Self Employed (SB/SE) Operating Unit, who are authorized to sign statutory notices of deficiency under Delegation Order Number 77 and SB/SE Delegation Order 4.8, may sign a notice of deficiency prepared by SB/SE employees on behalf of another operating unit.

2. Whether it is appropriate for the consents to extend the assessment period to provide that the agreement is being made by the taxpayer and the Commissioner of Internal Revenue.

3. Whether a consent to extend the assessment period is valid if it is signed by an authorized official after the stand-up of the operating units if it was prepared before the stand-up and it provides that the agreement is being made by the taxpayer and the District Director or Regional Director of Appeals.

CONCLUSIONS

1. Officials or employees of the Small Business & Self Employed (SB/SE) Operating Unit, who are authorized to sign statutory notices of deficiency under Delegation Order Number 77 and SB/SE Delegation Order 4.8, may sign a notice of deficiency prepared by SB/SE on behalf of another operating unit.

2. Consents to extend the assessment period may provide that the agreement is being made by the taxpayer and any official or employee of the Internal Revenue Service authorized to execute such consents, including the Commissioner of Internal Revenue. It is a business decision whether the agreement should provide that the agreement is being made by the Commissioner of Internal Revenue or other authorized official or employee.

3. The consent to extend the assessment period is valid where it is timely signed by an authorized official after the stand-up of the operating units, notwithstanding that it was prepared before the stand-up and it provides that the agreement is being made by the taxpayer and the District Director or Regional Director of Appeals.

FACTS

Statutory Notices

Prior to the stand-up of the SB/SE, Large and Mid-Size Business (LMSB), and Wage and Investment (W&I) operating units, employees in Examination's Quality Review function prepared and issued notices of deficiency on behalf of the District Director. As part of the IRS's modernization, the Quality Review function is now a compliance function under SB/SE's jurisdiction and there are no similar functions within the LMSB and W&I operating units. Accordingly, SB/SE has signed memoranda of understanding with LMSB and W&I, wherein the parties agree that SB/SE's Quality Review function will continue to prepare and issue such notices of deficiency, irrespective of whether the examination of the taxpayer's return was conducted by SB/SE, LMSB, or W&I.

Consents

A. Title of Official to Appear on Consent Form

Where audit considerations make it necessary for the Service to request and obtain additional time from the taxpayer to make an assessment of tax, the Service generally solicits the taxpayer's agreement on a Form 872 or other preprinted consent form. Prior to the stand-up, the preprinted consent forms provided that the agreement to extend the period for assessment of tax was being made by the taxpayer and either the District Director or the Regional Director of Appeals. The Service official who signed the Form 872 also was executing it on behalf of either the District Director or the Regional Director of Appeals.

B. Validity of Consent Signed After Stand-Up

The Service sent several taxpayers preprinted consent forms for their signature prior to the stand-up of SB/SE, LMSB, and W&I. In many cases, the taxpayers returned the executed consent form after the stand-up of SB/SE, LMSB, and W&I. The consents

were signed subsequently by officials authorized to execute the documents on behalf of the Service. In some cases, the consent continues to provide that the agreement was being made by the District Director or Regional Director of Appeals, but, in other cases, the Service made a pen and ink change to the consent before it was executed by the authorized official to provide that the agreement was being made by an Area Director or other authorized official in the new organization.

DISCUSSION

Statutory Notices

Section 6212 of the Internal Revenue Code authorizes the Secretary to send a notice of deficiency to a taxpayer if he determines that there is a deficiency in respect of any tax imposed by subtitles A or B or chapters 41, 42, 43, or 44 of the Internal Revenue Code. The notice must provide that the Secretary has determined a deficiency, the amount of the deficiency, and the tax period involved, but no particular form is required for a notice of deficiency. See Scar v. Commissioner, 814 F.2d 1363, 1367 (9th Cir. 1987). The notice of deficiency does not need to be signed to be valid. Urban v. Commissioner, 964 F.2d 888, 889 (9th Cir. 1992); Tavano v. Commissioner, 986 F.2d 1389, 1390 (9th Cir. 1993)(citing Brafman v. United States, 384 F.2d 863, 865 (5th Cir. 1967), aff'g. T.C. Memo. 1991-237; Commissioner v. Oswego Falls Corp., 71 F.2d 673, 677 (2d Cir. 1934); Stone v. Commissioner, T.C. Memo. 1998-314; see also sec. 6212.

The Internal Revenue Manual directs, however, that the notice of deficiency be signed by an appropriate delegate of the Commissioner. See IRM sec. 4.3.19.1.8.1(2). Pursuant to Delegation Order 77, the following individuals are authorized to sign or rescind notices of deficiency: Appeals Area Directors, Deputy Appeals Area Directors, or Appeals Team Case Leaders (as to their respective cases); TE/GE Area Managers; GE Field Examination Managers; GE Field Operations Managers; SB/SE Territory and Support Managers; W&I Territory Managers; and LMSB Territory Managers. Except in the case of an Appeals Team Case Leader, the authority to sign or rescind a notice of deficiency is not restricted to cases within their jurisdiction or the jurisdiction of their operating unit. Delegation Order Number 77 also permits the above officials, except the Appeals Team Case Leaders, to redelegate their authority to individuals directly in their area of jurisdiction. See also SB/SE Delegation Order 4.8 (authorizing SB/SE Territory Managers and Support Managers to delegate, by memorandum, signature authority on notices of deficiency to selected individuals within their area).

Inasmuch as a statutory notice of deficiency does not have to be signed to be valid, a notice of deficiency will not be invalid because it is signed by an individual who is not authorized to sign such documents. Nevertheless, the Service has decided to require signatures on issued notices of deficiency. Accordingly, we recommend that notices of

deficiency be signed by an individual who has been delegated such authority under Delegation Order Number 77. Pursuant to that delegation order, SB/SE Territory Managers and Support Managers are authorized to sign notices of deficiency, whether or not such notices are to be sent to SB/SE taxpayers. Thus, SB/SE Territory Managers and Support Managers may sign notices prepared on behalf of the LMSB, W&I, or TE/GE operating units. Also, inasmuch as SB/SE Territory Managers and Support Managers may delegate this authority by memorandum to selected individuals within their area, SB/SE Support Managers may, by written memorandum, authorize Quality Review Chiefs within their area to sign notices of deficiency on their behalf.

We understand that, for business purposes, SB/SE would like to have notices of deficiency prepared by its quality review staff on behalf of the LMSB and W&I operating units, in addition to those notices prepared on behalf of SB/SE, to be signed by a SB/SE Quality Review Chief under the "titular" name of the SB/SE Support Manager. As stated above, the SB/SE Support Manager is authorized to sign any notice of deficiency issued by the Internal Revenue Service. We, therefore, do not object to the use of the SB/SE Support Manager as the titular name on notices of deficiency prepared by SB/SE, whether or not such notices are prepared by SB/SE for LMSB, W&I, SB/SE, or TE/GE. Additionally, assuming that the SB/SE Support Manager has issued a memorandum properly delegating his or her authority to sign notices of deficiency to individuals who are Quality Review Chiefs in his or her jurisdiction, we do not object to all such notices being signed by the Quality Review Chiefs.

Consents

A. Title of Official to Appear on Consent Form

In general, the Service has three years after a return is filed to assess any amount of tax imposed under the Internal Revenue Code. Sec. 6501(a). Section 6501(c)(4)(A), however, permits the Service and the taxpayer to agree to extend the period for the assessment of any tax, except the estate tax provided in chapter 11, if the parties consent to such agreement in writing before the expiration of the time prescribed for assessment. Pursuant to Treasury Regulation § 301.6501(c)-1(d), the agreement to extend the period for assessment may be made by the taxpayer and the district director or regional commissioner, and Treasury Regulation § 301.7701-9(c) provides that,

> [a]n officer or employee, including the Commissioner, authorized by regulations or Treasury decision to perform a function shall have authority to redelegate the performance of such function to any officer or employee performing services under his supervision and control, unless such power to so redelegate is prohibited or restricted by proper order or directive. The Commissioner may also redelegate authority to perform such function to other officers or employees under his supervision and control and, to

the extent he deems proper, may authorize further redelegation of such authority.

See also sec. 7701(a)(11)(B),(12)(A)(i). Delegation Order Number 42 authorizes LMSB Directors and International Directors, Field Operations; SB/SE and W&I Directors of Compliance; TE/GE Directors, Employee Plans, Exempt Organizations, Government Entities and Customer Account Services; Directors, Appeals Operating Units; Directors, Accounts Management Field; Directors, Compliance Services Field; Operating Division Counsel; and other listed Service officials (including those with properly redelegated authority) to sign all consents fixing the period of limitations for assessment or collection of tax. Accordingly, incumbents or persons acting in the above positions have the authority to agree and sign all consents extending the period of limitations for assessment or collection of tax on behalf of the Internal Revenue Service. Cindrich v. Commissioner, T.C. Memo. 1984-294; see also Sanderling, Inc. v. Commissioner, 66 T.C. 743, 754-56, as supplemented by 67 T.C. 176 (1976), and aff'd on this issue 571 F.2d 174, 177 (3d Cir 1978); Huffmeyer v. Commissioner, T.C. Memo. 1987-48.

We understand that, for business reasons, the Service has determined that consents to extend the assessment period prepared after the stand-up should provide that the agreement is being made by the taxpayer and the Commissioner of Internal Revenue and that the document should be executed pursuant to the following instructions:

Instructions to Internal Revenue Employees:

You will need to complete the Division Executive's name and title depending upon your division:

If you are in Small Business and Self Employed Division, you will choose the name and title for the appropriate Division Executive for your business unit (e.g., Area Director for your area; Director, Compliance Policy; Director, Compliance Services).

If you are in Wage and Investment Division, you will choose the name and title for the Area Director for your area.

If you are in Large and Mid-Size Division, you will choose the name and title for the Director, Field Operations for your industry

If you are in Tax Exempt and Government Entities Division, you will choose the name and title for the Area Manager for your area.

If you are in Appeals, you will choose the name and title for the appropriate Director, Appeals Operating Unit.

The signature and title line will be signed and dated by the appropriate authorized official within your division.

As stated above, a consent to extend the period of limitations for assessment will be legally valid if it is made by and signed by the taxpayer and an officer or employee of the Internal Revenue Service authorized to sign such consents. Inasmuch as the Commissioner is authorized to agree to such consents, we do not object to your decision that, for business purposes, consents to extend the assessment period prepared after the stand-up will provide that the agreement is being made by the taxpayer and the Commissioner of Internal Revenue. Similarly, we do not object to your decision that, for business purposes, the "titular" name and signatory on such consents will be determined pursuant to the instructions set forth above.

B. Validity of Consent Signed After Stand-Up

An agreement to extend the period of limitations for assessment is not a contract, but the taxpayer's waiver of a unilateral defense. Kronish v. Commissioner, 90 T.C. 684, 693 (1988); Jones v. Commissioner, T.C. Memo. 1993-417. Nevertheless, the courts frequently apply contract principles in interpreting the terms of the waiver because section 6501(c)(4) requires that the parties reach a written agreement as to the extension. Jones v. Commissioner, supra and cases cited therein; Durgin v. Commissioner, T.C. Memo. 1992-656. Thus, an agreement to extend the period of limitations for assessment generally is valid if it denotes a manifestation of mutual assent to the terms of consent. See Woods v. Commissioner, 92 T.C. 776, 780 (1989); Jones v. Commissioner, supra; Durgin v. Commissioner, supra. Accordingly, an altered consent executed by both parties is valid unless the alteration is intrinsically prejudicial or constitutes a material modification of the rights of either party. Durgin v. Commissioner, supra; see also J.H. Rutter Rex Manufacturing Co. v. Commissioner, 853 F.2d 1275 (5th Cir. 1988), aff'g T.C. Memo. 1987-296.

While it is necessary that a consent to extend the period of time for assessing a tax be agreed to and signed by an official who is delegated with such authority, there is no significance to which authorized official agrees to and signs the consent. Thus, the consent is valid where it is timely signed by an authorized official after the stand-up of the operating units, notwithstanding that it was prepared before the stand-up and provides that the agreement is being made by the taxpayer and the District Director or Regional Director of Appeals. Such consent is also valid where the Service made a pen and ink change replacing District Director or Regional Director of Appeals with Area Director or another authorized official after the document was signed by the taxpayer. This change does not modify the rights of either party under the agreement and the manifest intent of the agreement–extending the period of limitations for the assessment of the tax–remains in place. Accordingly, this pen and ink change is not material and it does not invalidate the agreement. Inasmuch as the consents are valid if signed by the

appropriate official, whether or not the consent is modified, if it is determined that a pen and ink change be made regarding the title of the signing official, we recommend that the only pen and ink change be on the signature line, which should reflect the new title of the official who is executing the consent.

If you have further questions concerning this matter, please contact Richard Goldstein, Office of Associate Chief Counsel (Procedure & Administration) (Administrative Provisions and Judicial Practice Division) at (202) 622-7940.

cc: SB/SE Division Counsel
W&I Division Counsel
TEGE Division Counsel
LMSB Division Counsel